IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No. 6061 of 2006

DATE OF DECISION: 18.8.2006

Neeraj Malik

..... PETITIONER

VERSUS

State of Haryana and others

.....RESPONDENTS

CORAM:- HON'BLE MR. JUSTICE M.M.KUMAR
HON'BLE MR. JUSTICE M.M.S. BEDI

PRESENT: Mr.Jagbir Malik, Advocate for the petitioner.
Mr.Harish Rathee,Sr.DAG, Haryana for the State.

M.M.SBEDI,J

This petition filed under Article 226 of the Constitution prays for quashing orders dated 22.9.2003 (Annexure P-7) and 7.3.2005 (Annexure P-9) passed by General Managers, State Transport Panipat and Sonepat,respectively. A further prayer for quashing order dated 4.4.2006 (Annexure P-13) passed by the Transport Commissioner rejecting his claim for compassionate appointment has also been made. According to the order dated 4.4.2006 the petitioner is required to submit an application for grant of Rs.2.5 lacs under compassionate financial assistance. The petitioner also seeks a writ in the nature of mandamus against the respondents to appoint him on the post of Peon under the ex-gratia scheme.

The father of the petitioner, working as senior Conductor with

respondent No.3 expired on 1.9.1998 while on duty. On 27.1.1999 the mother of the petitioner applied for compassionate appointment of the petitioner for the post of a Clerk. Respondent No.3 on 29.7.1999 forwarded his application with recommendation to appoint him to respondent No.2. Respondent No.2 returned the case of the petitioner on the ground that the posts of Clerk and Conductor are in the same pay scale requiring the petitioner to submit an application for the post of a Peon. The mother of the petitioner resubmitted the application for the post of a Peon. She continued to visit the office of respondent No.2 but she was informed that the name of her son was in waiting list and he was to be given appointment as per his turn. On 28.2.2003 the State of Haryana framed rules known as Haryana Compassionate Assistance to the Dependents of Deceased Government Employee's Rules 2003 (for short ' 2003 Rules) for grant of compassionate appointment or financial assistance to the families of the deceased. It was provided in the amended rules that the waiting list would remain operative only for a period of three years after the death of the employee. On 31.3.203 instructions (Annexure P-6) were issued by the Government regarding the decision of the Government that all the pending cases were to be decided as per 2003 Rules. On 22.3.2003 (Annexure P-7) respondent No.3 wrote a letter to the mother of petitioner informing that as per new rules the waiting list stood expired and asked her to submit her consent for financial assistance of Rs.2.5 lacs. The mother of the petitioner sought employment for her son, which was declined by respondent No.3 directing him to submit an option for getting ex-gratia financial assistance vide letter dated 7.3.2005 (Annexure P-8). The order dated 7.3.2005

(Annexure P-9) was challenged by the petitioner by filing C.W.P. No. 4647 of 2005 in this Court, which was disposed of on 7.11.2005 by the Division Bench and a direction was issued to the respondents to consider the case of the petitioner for compassionate appointment in the light of the judgment of this Court in CWP No.17896 of 2003 (**Jai Ram vs U.H.B.V.N. Limited and others)** decided on 17.9.2004. The petitioner again approached the respondents with a representation dated 2.12.2005 (Annexure P-12). However, respondent No.2 rejected the claim of the petitioner for compassionate appointment vide order dated 4.4.2006 (Annexure P-13) on the ground that as per 2003 Rules the waiting list was to remain operative only for a period of three years and after three years the compassionate appointment was not be given. The validity of order dated 4.4.2006 (Annexure P-13) has been challenged inter alia on the ground that the respondents have illegally kept the case of the petitioner pending for compassionate appointment for four years and ultimately denied the legal right on the basis of a clause, which was not a part of the instructions existing at the time of the death of the petitioner's father. The impugned order dated 4.4.1006 (Annexure P-13) has been passed without considering the ratio of the judgment in **Jai Ram's case (supra).** The delay on part of the respondents cannot stand in the way of consideration and appointment of the petitioner on compassionate appointment.

Notice of motion was issued. Respondents 1 to 3 have filed written statement admitting that the petitioner's father expired on 1.9.1998. It is also admitted that at the time of the death of petitioner's father, the policy dated 8.5.1995 issued by the Government of Haryana regarding

grant of ex-gratia appointment was applicable. It is also admitted that the name of the petitioner had been kept in the waiting list for three years. Thereafter, the policy of 1995 was revised by framing statutory rules of 2003. As per Rule 3 of 2003 Rules the said rules were to be applicable to those dependents of the deceased Government employees whose cases were pending on the date of coming into force of the 2003 Rules and that the cases already decided were not be reopened. The respondents have placed reliance on Rule 6 of the 2003 Rules, which reads as follows:

> " **Rule 6 (1)** The Head of the concerned department where the deceased/ missing person was employed is competent to give appointment/provide compassionate financial assistance to the completely dependent indigent members of the family of the deceased/missing Government employee.
>
> (a) The Head of the Department shall prepare a list of such dependents which shall be valid for a period of 3 years and appoints will be given by the departments strictly in accordance with the seniority so maintained.
>
> (b) <u>The validity of the list shall laps after 3 years</u>.
>
> (c) The dependents of the deceased Government employees can exercise his preference with regard to option as contained in clause (b) of sub rule (1) of rule 4 of these rules within a period of one month after the expiry of the validity of the list prepared by the department, if no post exist in the department for ex-gratia appointment."

On the basis of the the provisions of 2003 Rules, it was claimed on behalf of the respondents that the claim of the petitioner has been rightly rejected for compassionate appointment vide the impugned order.

We have heard learned counsel for the parties at length and gone through the entire paper book carefully. The material question, which requires to be determined in the present case, is whether the rights of the petitioner for compassionate appointment could be governed by the Policy instructions of 1995 or by the rules framed in 2003, which came into existence much after the death of petitioner's father on 1.9.1998. The matter is not res integra. The same question had cropped up in the case of **Jai Ram (Supra)**. In the said case father of Jai Ram had died on 24.8.2002. His son and mother had moved an application dated 3.9.2002 for appointment on compassionate grounds. Despite recommendations of all the competent authorities their claim was rejected on the basis of Rule 3(d)(iii) of 2003 Rules, which prohibited the grant of compassionate appointment in case the deceased Government employee had crossed the age of 55 years. The claim of Jai Ram had been kept pending for an unreasonable long period. It was held in para 7 of the judgment as follows:-

> "..... The respondents cannot be permitted to take advantage of their own wrong. The petitioner had become eligible for being appointed on compassionate ground on the death of his father on 24.8.2002. The necessary application was made on 3.9.2002 (Annexure P-1). It was duly recommended by the competent authorities also. There was no justification as to why the petitioner could not have been appointed within a short period

of time. The very purpose of compassionate appointment is to render assistance to the family whose sole bread winner has died/ Clause (vii) of the instructions dated 8.5.1995 (Annexure P-5) provides as under:-

> (vii) All cases of ex-gratia appointment shall be processed and decided by the Heads of Departments within three months of the receipt of the application."

from the above extract of the instructions, it becomes clear that Heads of Departments were required to process and decide the claims of appointment on compassionate ground within a period of three months. Had the claim of the petitioner been considered within three months of the receipt of the application, the 2003 Rules would not have been applicable. These rules were promulgated by a Circular dated 31.3.2003 and were adopted by the respondent no.1 in its meeting held on 26.5.2003. We are of the considered opinion that the impugned order (Annexure P-7) dated 3.10.2003 is liable to be quashed on the short ground that the claim of the petitioner had to be considered under the instructions dated 8.5.1995....."

This view is similar to the one expressed by Hjon'ble the Supreme Court in the case of **Smt. Sushma Gosain and others vs Union of India and others AIR 1989 S.C.1976**, wherein it was held as follows:-

> " We consider that it must be stated unequivocally that in all claims for appointment on compassionate grounds, there should not be any delay in appointment. The purpose of providing

> appointment on compassionate ground is to mitigate the hardship due to death of the bread earner in the family. Such appointment should, therefore, be provided immediately to redeem the family in distress. It is improper to keep such case pending for years. If there is no suitable post for appointment supernumerary post should be created to accommodate the applicant."

when the petitioner had approached this Court earlier, a specific direction was issued to the respondents to consider the case of the petitioner in the light of **Jai Ram's case (supra).** We deprecate the approach adopted by the Transport Commissioner who while passing impugned order dated 4.4.2006 (Annexure P-13) has contravened the ratio of the judgment in **Jai Ram's case (supra) (Annexure P-10)** . It defies ignorance. A perusal of the order dated 4.4.2006 (Annexure P-13) clearly reflects that respondent No.2 has tried to by-pass and avoid the directions issued by this Court and had made an attempt to circumvent the law laid down in **Jai Ram's case (supra)**. Respondent No.2 has again considered the case of the petitioner as per 2003 Rules. Instead of understanding the ratio of the judgment in **Jai Ram's case** which has laid down that the case of the petitioner is to be governed by the instructions of 1995, respondent No.2 has entered into controversy of comparison of facts in the case of the petitioner and that of **Jai Ram's case w**hile preparing a comparative table. It would be apposite to refer to the observations made in the impugned order dated 4.4.2006 which reads as follows:-

> ".....The case of the applicant was kept in waiting list till the new rules came into force. After coming into force of new rules on 31.3.2003 as the orders were received that all the pending cases will also be decided as per new rules, we returned the case of the applicant for compassionate appointment to the General Manager after removing his name from the waiting list and directed the General Manager to give financial assistance of Rs.2.50 lacs to the applicant because as per new rules the waiting list will survive only for 3 years from the date of death of the employee."

The above said observations reflected the lack of sense of interpretation of judicial orders and an attempt to abuse the process of law. It is surprising as to how respondent No.2 could apply the provisions of 2003 Rules for rejecting the claim of the petitioner for compassionate appointment when **Jai Ram's case (supra)** specifically prohibited the respondents from considering the case of the petitioner under 2003 Rules.

For the reasons aforementioned the impugned order dated 4.4.2006 is held to be illegal and contrary to the ratio of the ruling in **Jai Ram's case** as well as the judgment of Hon'ble the Supreme Court in **Smt.Sushma Gosain and others (supra).** Thus we set aside the same. The writ petition is allowed and the respondents are again directed to consider the case of the petitioner in the light of instructions Annexures P-2 and P-3 as has been held by this Court **Jai Ram's case (Supra).** The needful shall be done within a period of three months from the date of receipt of

certified copy of this order. The petitioner shall also be entitled to costs as he has been unnecessarily dragged to file this petition, which we quantify at Rs.10,000/-.

(M.M..S.BEDI)
JUDGE

August 18,2006
TSM

(M.M.KUMAR)
JUDGE